Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review –	)	
Testing New Technology	)	CC Docket No. 98-94
	)	

COMMENTS OF AIRTOUCH COMMUNICATIONS, INC.

AirTouch Communications, Inc. ("AirTouch") hereby submits its comments in response to the above-referenced *Notice of Inquiry* ("*NOI*").[1] AirTouch is a CMRS provider with interests in cellular, paging, PCS and mobile satellite services, both domestic and international.

INTRODUCTION

In this proceeding, the Commission queries whether it might use its deregulatory power under section 11 of the Communications Act,[2] or alternatively, its forbearance power under section 10 of the Communications Act,[3] to determine how it can "best promote the testing and development of new technologies that in large part make . . . innovative services

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[1] *1998 Biennial Regulatory Review — Testing New Technology*, CC Docket No. 98-94, Notice of Inquiry (rel. June 11, 1998)("*NOI*").

[2] 47 U.S.C. § 161.

[3] 47 U.S.C. § 160.

possible."[4] As an operator that is continually conducting its own experimentation in order to improve its existing services and create new, better and more cost effective services for its customers, AirTouch applauds the Commission's efforts to encourage experimentation by all operators. In order to better serve its customers, for example, AirTouch is engaged in substantial experimentation to reduce interference in its licensed bands. To this end, AirTouch is examining new technologies involving reconfiguring sites, retuning frequencies and employing microcell and smart antennas.[5]

The development of new technologies and the innovative consumer products and services that flow from such technologies cannot, however, come at the expense of existing authorized telecommunications carriers that have been licensed to offer commercial services in their assigned spectrum. Any efforts by the Commission to eliminate unnecessary regulation and streamline its experimental licensing framework must not lose sight of this central tenet of experimental licensing. Moreover, continued Commission oversight is needed to ensure that experimental licensees are not allowed to circumvent commercial licensing requirements by conducting unlimited market trials under the guise of the experimental licensing process.

I. THE COMMISSION'S DEREGULATORY FRAMEWORK FOR EXPERIMENTAL LICENSING MUST CONTINUE TO PROTECT EXISTING OPERATORS

One of the cornerstones of the Commission's experimental licensing rules is that experimental licensees may not cause harmful interference to the primary, authorized users of

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[4] NOI at ¶ 8.

[5] *See,* W.C.Y. Lee, *Mobile Cellular Telecommunications: Analog and Digital Systems*, McGraw Hill (1995) at 310, 582.

the spectrum and must cease operation if such interference occurs.[6] Indeed, experimental licenses are often expressly conditioned on the experimental licensee coordinating its experimental operations with incumbent, authorized users or obtaining the consent of such users. To the extent the Commission decides to eliminate any regulatory barriers associated with new technology testing, it must not lose sight of the importance of protecting existing users from harmful interference.

Existing, authorized users of mobile spectrum must be afforded regulatory certainty with respect to the use of their spectrum. Mobile operators have invested many billions of dollars in building out their networks, developing their markets, and in some cases, purchasing their spectrum. At the same time, consumers have come to depend upon these networks for reliable business and emergency communications. As a result, duly licensed providers should be confident that their fully authorized use of their spectrum will not be encumbered and put at risk by experimental users of the spectrum. For example, experimental operations in cellular or paging spectrum may, at a minimum, cause poor signal quality for such operator's customers. In the worst case scenario, however, such experimental operations may cause all of the calls on a particular channel in a portion of a market to become unusable for a period of time. An operator's customers – the public – should not be forced to suffer poor service quality or disruption in service because of experimental operations. Incumbent operators need and deserve the full measure of the protections afforded them by the Commission's rules and policies so that they can offer the highest quality service to the public.

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[6] *See* 47 .C.F.R § 5.151(a)(2).

To this end, the Commission's experimental licensing processes must continue to place the burden of proof on experimental license applicants to demonstrate (prior to commencing operations) that their operations will not cause harmful interference to incumbent operators.[7] It should not be the province of the incumbent operator to prove that an experimental licensee will not cause harmful interference before the Commission prohibits an experimental licensee from operating. Rather, the burden of proof is on the experimental licensee to demonstrate with concrete evidence that its program of experimentation will not interfere with the operations of existing licensees. Only in this way can the rights of incumbent licensees and the public adequately be safeguarded.[8]

In order to maintain continued protection of incumbent, primary licensees, a number of the Commission's proposals to streamline its experimental licensing processes should be abandoned. For example, the Commission seeks comment on whether it should relax or eliminate existing rule requirements for radio licensing in the context of short-term experimental testing of new technology and new applications of existing technology.[9] Likewise, the Commission asks whether it "should allow trials of new technologies or services

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[7] *See, e.g., Contemporary Communications,* 98 FCC 2d 1229 (1984) (placing burden of proof on experimental licensee who was not permitted to engage in "limited market trials" without first demonstrating ability to protect licensed services from harmful interference); *Beep Communications Systems*, 88 FCC 2d 1303 (1982) (resolving matter of dueling engineering studies by proposing conditional grant subject to field test measurements).

[8] In the event that an experimental license is issued, the experimental licensee must also continue to be responsible for the correction of any interference at its sole expense.

[9] NOI at ¶ 11.

to take place after expedited review or without any Commission approval at all."[10] In addition, the Commission suggests that it establish a time limit for Commission review of streamlined experimental applications such that qualifying applications would be deemed granted automatically after the expiration of a specified time period, unless the Commission either rejected the petition or notified the applicant of the need for further documentation.[11]

Each of these proposals would undermine the Commission's ability to ensure that experimental licensees do not cause harmful interference to incumbent operators and the public. With respect to the elimination or relaxation of radio licensing, the Commission acknowledges that radio licensing "prevents radio frequency interference caused by and to co-channel and adjacent channel service providers."[12] The potential for interference from experimental licensees will greatly increase if there are inadequate radio licensing safeguards. Similarly, the Commission's proposal to streamline or eliminate approval for experimental licenses may promote experimentation, but only at the expense of operating certainty for existing users of the spectrum. Accordingly, the Commission should eliminate these proposals from this proceeding.[13]

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[10] *Id.* at ¶ 13.

[11] *Id.* at ¶ 24.

[12] *Id.* at ¶ 11.

[13] One alternative method that the Commission should consider to promote the benefits of experimental licensing is the allocation of a separate spectrum band for experimental licensees that are not otherwise authorized to operate in the requested spectrum. Technology that is tested in one band can then easily be converted to another band. By segmenting such experimentation into a separate band, the Commission would alleviate concerns of interference by incumbent, primary users of the spectrum.

II. COMMISSION VIGILANCE OVER THE EXPERIMENTAL LICENSING PROCESS REMAINS CRUCIAL TO ENSURE THAT EXPERIMENTAL LICENSEES DO NOT EXCEED THE BOUNDS OF THEIR EXPERIMENTAL AUTHORIZATIONS

The Commission's proposals to streamline its experimental licensing process must not decrease the Commission's oversight of experimental licensees. While AirTouch supports the Commission's efforts to encourage innovation and stimulate competition through experimental licensing, the experimental licensing process cannot be used to circumvent long-established permanent licensing requirements. As the Commission has recognized in the context of its experimental radio services procedures, "Part 5 procedures are not a substitute for the normal Commission licensing process."[14]

Absent vigilant Commission scrutiny of the experimental licensing process, experimental licensees might be tempted to abuse the process. For example, an experimental licensee might attempt to use its experimental license to provide permanent commercial service – an action expressly prohibited by the Commission's rules[15] and directly contrary to the public interest.[16] The Commission has definitively stated that "[t]he only way that the experimental use can be authorized on a permanent basis is through a rulemaking

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[14] *See, e.g., Policy Statement on Experimental Satellite Applications*, 7 FCC Rcd 4586 (1992).

[15] 47 C.F.R. § 5.68 (experimental authority "does not confer any right to conduct an activity of a continuing nature").

[16] For example, consumers who are misled into believing that an experimental licensee's operations are permanent might make purchasing decision based on such an erroneous belief only to later discover that their purchases may be worthless if permanent authority is not granted by the Commission.

proceeding."[17] Streamlined procedures designed to facilitate experimental licensing should not sacrifice stringent enforcement of the Commission's experimental licensing rules.

CONCLUSION

This proceeding presents the Commission's laudable goal of encouraging innovation in the provision of telecommunications services. Any efforts to facilitate technological innovation through streamlining of the Commission's experimental licensing process, however, must also ensure that incumbent licensees and the public are adequately protected from harmful interference and that experimental licensing procedures are not used to circumvent permanent licensing requirements. By ensuring that all of these interests are

[17] *Amendment of the Commission's Rules to Diminish Restrictions on Licensing and Use of Stations in the Experimental Radio Service, Report and Order*, Gen. Docket No. 82-469, FCC 83-471 at ¶ 16 (rel. Nov. 16, 1983).

represented in the experimental licensing framework, the Commission will create a process that promotes experimentation, but does not favor experimentation over existing commercial operations.

Respectfully submitted,

AirTouch Communications, Inc.

By: _____

Pamela J. Riley
David A. Gross

Joyce H. Jones

AirTouch Communications, Inc.
One California Street, 29th Floor
San Francisco, CA 94111

AirTouch Communications, Inc.
1818 N Street, NW
Washington, D.C. 20036
(202) 293-3800

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